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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,648	01/18/2001	Ichiro Mizunuma	400788	6088
23548	7590	01/11/2005	EXAMINER	
LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960			KYLE, CHARLES R	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/761,648

**Applicant(s)**

MIZUNUMA ET AL.

**Examiner**

Charles R Kyle

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>January 18, 2001</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-8** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**With respect to Claims 1-8**, they recite that “a plurality of clients” is “connectable” to a network. There is no recitation that the connection actually occurs. This makes the Claim language vague and indefinite. The Claims also recite the phrase “through the auction thread, by allocating resources ....” It is unclear what is done through the auction thread. The Claims also recite at the last line of Claim 1, “specifying desired resources’...” The possessive case of resources appears incorrect. The Claims also recite “from time-to-time,” which is vague and indefinite. The Claims recite the phrase ” ordering, the bids in the bid table according, to a priority based on price and desired resources specified...”; the commas are extraneous. The Claims recite the phrase ” by clients supplying bids in a decreasing order of the priority until all of the resources have been allocated”; the period after “resources” is extraneous. Claims 1-8 purport to be system Claims, per the preamble, but recite ordering and allocating steps; the nature of the claims as system or method is unclear. Likewise, Claims 2-8 recite what appear to be further limiting method steps rather than system elements.

The Claims have been examined to the best of the Examiner’s ability, given their condition.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over US

2003/0101124 *Semret et al* in view of US 6,820,277 *Eldering et al*.

**With respect to Claim 1**, *Semret* discloses the invention substantially as claimed, including in a system for competitively allocating resources of a server elements of:

a server receiving and processing resources and producing at least one output (para. 34, lines 19-21; para. 41) all outputs of the server together not exceeding resources of the server in terms of a maximum bit rate (Fig. 5; paras. 45-47), the server including a bid table for recording client bids (Fig. 15(q)) and an auction thread for evaluating competing client bids with regard to resources requested and price (paras 47-72)

a network connected to the server (Fig. 9(b); para. 94); and

a plurality of clients connectable to the network and requesting, from time-to-time, access to resources and specifying desired resources including bit rate, and a bid price for the resources specified (Fig. 5, paras. 46-47; Fig. 15(g)), the server responding to each client request by establishing a server thread for each client for supplying requested resources (para. 34),

ordering, the bids in the bid table according, to a priority based on price and desired resources specified (Fig. 15(q); and

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allocating resources requested by clients supplying bids in a decreasing order of the priority until all of the resources have been allocated to clients specifying desired resources' and a bid price (para. 47; paras. 89-94).

Although *Semret* discloses auction of bandwidth commonly associated with audio or video, it does not specifically disclose these elements. *Eldering* discloses the auction of audio and video at Summary of the Invention. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the audio/video content auctioned in *Eldering* in the system of *Semret* because this would provide increased revenues to distributors of such content.

**Concerning Claim 2**, *Semret* discloses giving highest priority to a highest bidder at para 47.

**With respect to Claim 3**, Official Notice is taken that calculation of revenue from a purchaser by multiplying price by units was old and well known at the time of the invention. For example, revenue would be calculated as a product of minutes of a bit rate multiplied by a price per minute. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Semret* to include such a calculation because this would allow a supplier of resources to select bidder(s) producing greatest individual revenue. This would avoid fragmentation of the resources among many small bidders.

**With respect to Claim 4**, *Semret* discloses updating and reassignment of resources at paras. 73-76 and 88-94.

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**Concerning Claim 5**, *Semret* discloses variable price /resource pairs at para. 79. It is inherent that a bidder would desire such variable pricing at a minimum to minimize his/her cost.

**Concerning Claim 6**, *Semret* discloses that a bidder forgoes resources above a certain maximum price at para. 47.

**With respect to Claim 7**, the Claim recites a bidding range which was old and well known. Such a range would be obvious as a starting bid and maximum bid set by a bidder.

**As to Claim 8**, *Semret* discloses guaranteed resource supplies at para. 78.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,757,273

Hsu et al

June 29, 2004

Cited for its teaching of the equivalence of bit rate and bandwidth.

US 2003/0083926 A1

Semret et al

May 1, 2003

Cited for its teaching of a hold price.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk  
January 3, 2005

Examiner Charles Kyle

A handwritten signature in black ink, appearing to read "Charles Kyle", with a stylized flourish at the end.